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7 DANIEL JACOBSON, individually and on  
behalf of all others similarly situated,  
8 Plaintiff,  
9 v.  
10 SNAP-ON TOOLS COMPANY, et al.,  
11 Defendants.

Case No. 15-cv-02141-JD

**ORDER DENYING LEAVE TO FILE  
MOTION FOR RECONSIDERATION  
AND ADMINISTRATIVELY CLOSING  
CASE**

Re: Dkt. No. 35

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13 After extensive briefing and evidentiary submissions by the parties, the Court recently  
14 compelled arbitration of the First through Ninth claims of plaintiff Daniel Jacobson's complaint on  
15 an individual basis, but retained and stayed the Tenth claim for representative PAGA civil  
16 penalties. Dkt. No. 34. Jacobson has asked for leave to file a motion for reconsideration based on  
17 alleged errors in the arbitration order. The request is denied.

18 Plaintiff's main contention is that Court overlooked the parties' purported intent to strike  
19 the whole arbitration clause in the Franchise Agreement if a provision barring "consolidation,  
20 joinder, and/or class action" in the arbitration was found to be unenforceable. But the Court did  
21 not make that finding. Rather, as plaintiff himself urged in opposition to the motion to compel  
22 arbitration, another provision of the parties' agreement indicates that they "'agree[d] to arbitrate  
23 only controversies and disputes that are specific to Franchisee ... and not issues that effect Snap-  
24 on franchisees generally.'" Dkt. No. 20 at 13 (quoting the Franchise Agreement § 25(B)). Since  
25 representative PAGA claims cannot be waived but can be arbitrated depending on the parties'  
26 intent, plaintiff's own characterization of the agreement is consistent with the holding that the  
27 representative claims should not be arbitrated. That is a far cry from striking down a non-  
28 severable prohibition on class or consolidated actions.

1       Significantly, unlike the recent decisions that Jacobson relies on involving arbitration  
2 clauses in employment agreements sponsored by Uber Technologies, Inc. and others, the  
3 Franchise Agreement does not explicitly purport to waive representative or PAGA claims or  
4 expressly provide that a representative or PAGA claim waiver “shall not be severable.” *See, e.g.*,  
5 *Mohamed v. Uber Technologies, Inc.*, 2015 WL 3749716 at \*26 (N.D. Cal. June 9, 2015).  
6 Consequently, those cases are not relevant here and are no basis for reconsideration of the Court’s  
7 order.

8       Jacobson also suggests that the Court did not take into account defendants’ statements that  
9 they delivered disclosure documents to him before he signed the Franchise Agreement. This  
10 argument is equally ill conceived. As the Court held in ordering arbitration, one reason-- among  
11 several reasons -- that plaintiff’s meeting of the minds argument failed was that plaintiff himself  
12 expressly declared that “no one explained anything about arbitration” to him before he signed.  
13 Dkt. No. 34 at 5. After taking that position, Jacobson cannot now change course and claim that he  
14 was, in fact, told something misleading about arbitration. Even raising that contention gives the  
15 Court pause about the propriety of plaintiff’s arguments and whether he and his counsel are acting  
16 in full compliance with Rule 11 of the Federal Rules of Civil Procedure.

17       Jacobson’s scattershot reference to three unconscionability issues that he barely touched on  
18 in his original briefs does not warrant reconsideration, either. For the most part, Jacobson simply  
19 insists that his prior points were right, a position that the Court has already declined to embrace.  
20 And he has not tendered anything new or different that qualifies as a basis for reconsideration. For  
21 example, his return to the purported issue of a shortened limitation period merely expands on the  
22 bare string cites provided in his original papers. Dkt. No. 35 at 5-7. That does not meet the  
23 standards for reconsideration, and his other unconscionability points fail for the same reason.

24       Consequently, leave for reconsideration is denied. In light of the disposition of this motion  
25 and the time that will likely be necessary for completion of the arbitration proceedings, the Court  
26 directs the Clerk to close this case for administrative purposes. The Court makes clear that the  
27 closing is administrative only; nothing in this order will be considered a dismissal or disposition of  
28 the action or any issue in it. The parties should continue to provide status updates to the Court

1 about the progress of the arbitration every three months, as previously ordered.  
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3 **IT IS SO ORDERED.**

4 Dated: January 5, 2016

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6 JAMES DONATO  
7 United States District Judge

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United States District Court  
Northern District of California